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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/715,456	11/17/2000	Egor Ciotic		6894

7590 02/21/2002  
Risto A Rinne Jr  
2169 East Francisco Blvd #A  
San Rafael, CA 94901

EXAMINER

ELOSHWAY, CHARLES R

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 02/21/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/715,456

Applicant(s)

CIOTIC, EGOR

Examiner

Charles R. Eloshway

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 11 and 15-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-18 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's remarks as to the election requirement indicate some confusion over the basis for the requirement. In the last Office action, Examiner accepted applicant's characterization of fig. 3 as another view of fig. 2 and stated that "[t]o the extent that the claims directed to Species [I] also define features shown in fig. 3 (Species II), they will be examined together[.]" To make the point clear, Examiner hereby withdraws the grouping of fig. 3 as a separate species and considers it to be coextensive with Species I based on applicant's remarks. For the sake of clarity, the numbering of the Species as indicated in the election requirement (Paper No. 2) will remain the same.

As to the shape of the chute and the location of the vent opening, applicant appears to be confusing fig. 3 with Species III (fig. 4). Fig. 4 clearly shows a different chute shape and vent opening arrangement from that shown in figs. 1-3 and is, by disclosure, intended to be an entirely separate embodiment. The conical chute shape is not, by disclosure, shown or intended to be shown in figs. 1-3. Thus, fig. 4 was correctly identified as a species separate from that shown in figs. 1-3 and the finality of the requirement was proper.

Applicant now argues that because the Species I embodiment shows a slight taper the only difference between it and Species III is the degree of taper, which is a matter of design choice. Remarks, pg. 11. Applicant also suggests that Species I and Species III are not different species. Remarks, pg. 12. It is not clear on what basis applicant is making this assertion. While it is true that both species show some form of a conical shape, as pointed out above, there are other differences between the two, namely the location of the vent opening. It is not clear, therefore, whether applicant intended the admission that the two species are not patentably distinct to apply to the structures in their entirety or only to the shape of the chute. For this reason, Examiner will not treat the above-noted admission as an admission that Species I and Species III are not patentably distinct from each other.

***Claim Rejections - 35 USC § 112***

2. Claims 5, 6, 8-10, and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 5 and 6, "flexible hose means" lacks antecedent

basis. The word "means" was deleted in the amendment to claim 5 at line 3.

In claim 8, "means for providing a toilet seat" lacks antecedent basis. "Means for providing" was deleted in the amendment to claim 1.

In claim 9, "means for providing a chute" and "means for providing a toilet seat" lack antecedent bases. "Means for providing" was deleted in the amendments to claims 8 and 1, respectively.

In claim 10, "means for providing a chute" lacks antecedent basis." "Means for providing" was deleted in the amendment to claim 8.

In claim 12, "means for providing a seal" is indefinite for the reasons advanced at paragraph 4 of the prior Office action and will not be treated on the merits in this Office action for the same reasons.

***Claim Rejections - 35 USC § 103***

3. Claims 1-4, 8-10, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holley in view of DE 1,111,353.

Claims 1-4, 8, 9, 13, and 14 are rejected for the reasons

advanced in the prior Office action at paragraph 6, with the following modifications to account for the claim amendments:

Although DE '353 teaches that the "means for venting" vents the air to the area near the toilet, it would have been an obvious matter of design choice to simply pump the air to a different location using conduits or other, similar "means" if one desired not to recirculate the evacuated air. This was noted in the prior Office action at paragraph 6 with respect to claim 3. The same reasoning applies to claim 14 as amended.

Regarding claim 10, Holley teaches a "conical" chute.

4. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holley in view of DE '353 as applied to claim 3 above, and further in view of Agelatos et al.

These claims are rejected for the reasons advanced at paragraph 7 of the prior Office action. As noted therein, the fans taught by DE '353 and Agelatos are the same as the fan disclosed in the instant application and, inasmuch as the instant fan provides "positive" and "negative pressure" upstream and downstream, so too do the prior art fans.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Holley in view of DE '353 as applied to claim 3 above, and further in view of Lee, III.

Claim 7 is rejected for the same reasons advanced in the

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prior Office action at paragraph 8.

*Response to Arguments*

6. Applicant's concerns as to the propriety of the election requirement have been fully addressed above.

7. With respect to the prior art rejections, applicant first argues that none of the prior art teaches venting the toilet to a location remote from the toilet. As pointed out in the rejection above, however, the choice of where to dispose of the evacuated air is plainly obvious. It is simply a matter of design expediency based on where one would want to dispose of the evacuated air. The fact that DE '353 also teaches a filter in the system does not contradict this logic. The filter simply provides the additional benefit of deodorizing the air so that no matter where the air is vented, foul odors are removed.

8. Applicant's arguments that there is somehow patentable significance attached to the choice of a DC motor over an AC motor are not persuasive. The substitution of one for the other would have been a plainly obvious design choice, depending on, e.g., whether an electrical outlet was nearby.

**Conclusion**

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles R. Eloshway whose telephone number is (703) 308-0104. The examiner can normally be reached on Monday-Thursday, 7AM-4PM.

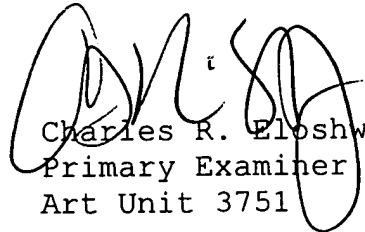
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be



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reached on (703) 308-2580. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7766 for regular communications and (703) 308-7766 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0975.

  
Charles R. Elishway  
Primary Examiner  
Art Unit 3751

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February 20, 2002